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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

TRB NETWORK, INC.,

Plaintiff and Respondent,

v.

WOORI PHARMACY, INC.,

Defendant and Appellant.

B204335

(Los Angeles County
Super. Ct. No. BC353380)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Mel Red Recana, Judge. Affirmed.

JHK Law Group, Inc., Jae H. Kim for Defendant and Appellant.

Marh & Associates, David Marh, Simon H. Langer for Plaintiff and Respondent.

The parties to this appeal entered two contracts, each containing a forum selection clause. The clause states that the contracts may be enforced by an arbitration panel, in superior court or in federal court, so long as the forum is located in Southern California. Plaintiff instituted litigation in superior court. Sixteen months later, defendant moved to compel arbitration. The trial court denied the petition because the forum clause permits disputes to be resolved in any of the three specified fora, and plaintiff chose litigation, not arbitration. We affirm.

FACTS

On July 22, 2005, plaintiff TRB Network Group, Inc., and defendant Woori Pharmacy, Inc., entered two distribution agreements (the Agreements). The Agreements each contain an identical clause entitled “Forum.” The Forum Clause reads: “For the purpose of interpreting and/or enforcing this Agreement, the parties hereby voluntarily and knowingly choose the approved arbitration panels in Southern California, the California state courts in Southern California or the U.S. District Court of Central District to be the chosen forum, and agree that such arbitration panels and courts have personal jurisdiction over the parties. The parties hereby voluntarily and knowingly waive all defenses of *forum nonconveniens* and/or *improper venue*.”

In June 2006, plaintiff sued for breach of the Agreements. On October 22, 2007, four months before trial, defendant filed a petition to compel arbitration. Defendant argued that the Forum Clause “requires that petitioner and respondent arbitrate their controversy” Defendant asked the court to stay proceedings until arbitration was completed. Plaintiff opposed the motion to compel arbitration.

On December 4, 2007, the trial court denied defendant’s motion. The court found that the Agreements do not require arbitration. Rather, the court concluded, the Forum Clause affords three options, and plaintiff chose “the option of fighting this case in this court and . . . once the choice has been made, [it’s] done.” A timely appeal from the denial of defendant’s motion was filed on December 6, 2007.

DISCUSSION

The trial court's denial of defendant's petition to compel arbitration is an appealable order. (Code Civ. Proc., § 1294, subd. (a).) Arbitration is a matter of contract. (*Marsch v. Williams* (1994) 23 Cal.App.4th 250, 255.) A party cannot be forced to arbitrate in the absence of an agreement to do so. (*Ibid.*; *Arista Films, Inc. v. Gilford Securities, Inc.* (1996) 43 Cal.App.4th 495, 501.) The interpretation of the parties' agreement--and whether it requires arbitration--presents a question of law that is reviewed de novo, in the absence of conflicting extrinsic evidence. (*Stirlen v. Supercuts, Inc.* (1997) 51 Cal.App.4th 1519, 1527.)

Defendant correctly cites the law governing the interpretation of contracts. The language of the contract governs its interpretation if the language is clear and explicit. (Civ. Code, § 1638.) The intention of the parties is to be ascertained from the contract alone, if possible. (Civ. Code, § 1639.) The contract must be interpreted in a manner that will make it lawful, operative, definite, reasonable and capable of being carried into effect, if it can be done without violating the intention of the parties. (Civ. Code, § 1643.) The words of the contract are to be understood in their ordinary and popular sense. (Civ. Code, § 1644.) If the language is uncertain, it should be interpreted most strongly against the party that drafted it. (Civ. Code, § 1654.)

Forum selection clauses are valid and enforceable absent a showing that enforcement would be unreasonable and unjust, or that the clause is invalid due to fraud or overreaching. (*The Bremen v. Zapata Off-Shore Co.* (1972) 407 U.S. 1, 15; *Cal-State Business Products & Services, Inc. v. Ricoh* (1993) 12 Cal.App.4th 1666, 1678-1679.) This Court had occasion to consider a forum clause in *Berg v. MTC Electronics Technologies Co.* (1998) 61 Cal.App.4th 349. In *Berg*, the defendant agreed to submit "to the jurisdiction of the State of California and the United States Federal courts sitting in the City of Los Angeles, California, for the purpose of any suit, action or proceedings" (*Id.* at p. 357.) We characterized this as a "permissive" forum selection clause because it did not clearly mandate litigation in a particular forum: "Clauses that grant

jurisdiction to a particular forum without expressly making that forum the mandatory situs for resolution of disputes are considered permissive only.” (*Id.* at p. 359.)

Defendant does not contend that the Forum Clause in the Agreements is the result of fraud or overreaching. Nor does defendant argue that enforcement of the clause is unreasonable or unjust. Indeed, defendant agrees that the clause is “valid and enforceable.” Defendant argues that the clause is, at most, ambiguous.

The Forum Clause is not ambiguous. As in the *Berg* case, this is a “permissive” forum selection clause. It lists the different forum options available to the parties in the event of a dispute, without clearly mandating the use of one forum. This is clear from the language used. The parties chose arbitration, the state courts “or” the federal district court. The one limitation imposed by the clause is that the dispute has to be resolved in Southern California.

Defendant engages in verbal acrobatics in an attempt to convince us that arbitration is the *only* type of dispute resolution contemplated by the Agreements. Yet the language used is clearly disjunctive: it lists arbitration, state court “or” federal court as a possible forum. It is illogical to read the clause, as defendant does, to say that parties may use arbitration panels “of” the superior or federal courts, not the courts themselves. The clause expressly grants jurisdiction to the “arbitration panels *and* courts,” whichever of the three might be chosen by the party claiming a breach of the Agreements. The Forum Clause is susceptible to only one interpretation, and that is the interpretation correctly identified by the trial court as giving plaintiff a choice of forum. Plaintiff’s selection of the superior court cannot be derailed by defendant’s eleventh-hour desire for arbitration.

DISPOSITION

The judgment is affirmed.

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BOREN, P.J.

We concur:

DOI TODD, J.

ASHMANN-GERST, J.